

Message Text

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ACTION EUR-25

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TO AMEMBASSY BONN

INFO AMEMBASSY LONDON

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C O N F I D E N T I A L BERLIN 1488

E.O. 11652: GDS

TAGS: PGOV, WB, GE, GW

SUBJECT: BRUECKMANN - PROPOSED LEGISLATIVE SOLUTION

REFS: A) BONN 13528; B) BERLIN 1451; C) BONN 13682

1. WE STRONGLY SUPPORT EMBASSY CONCLUSION, PARAS 6-7, REF C, WITH ONE RESERVATION. BK/L RESTATING ALLIED POSITION THAT BUDESGERICHTSHOF, IN DECIDING CASE ON APPEAL FROM BERLIN UNDER 1953 INNER-GERMAN LEGAL ASSISTANCE LAW (OR ANY OTHER LAW, FOR THAT MATTER), CAN NOT TAKE INTO ACCOUNT FEDERAL CONSTITUTIONAL COURT DECISION ON CASE ARISING IN BERLIN (PARA 4 REF A) STRIKES US AS OF MARGINAL UTILITY. UNDER SCENARIO SKETCHED BY SENATOR KORBER (REF B), BRUECKMANN DASE WOULD PROBABLY NOT COME BEFORE BUNDESGERICHTSHOF, AND FRG OFFICIALS CONSULTED BY EMBASSY APPARENTLY DO NOT FEEL PRACTICAL PROBLEMS LIKELY TO ARISE IN NEAR FUTURE. FRG REP MAY HAVE STOPPED SHORT OF GIVING ASSURANCE BERLIN STAATSANWALT WOULD RESOLVE EXTRADITION QUESTION UNDER NEW LEGISLATION, BUT KORBER,
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WHO HAS RESPONSIBILITY FOR CASE IN BERLIN, GAVE THIS ASSURANCE

(PARA 6, REF B).

2. WHILE THERE IS SOME ADVANTAGE IN MAKING CRYSTAL CLEAR RESTRICTED NATURE OF BUNDESGERICHTSHOF ROLE WHEN IT DEALS WITH BERLIN CASES AND IN REFINING OUR FREQUENTLY REPEATED STATEMENT AS TO LACK OF FEDERAL CONSTITUTIONAL COURT COMPETENCE IN BERLIN CASES, EVEN WHERE BERLIN CASE HAS BEEN THROUGH ANOTHER FEDERAL COURT, THERE IS ALSO POSSIBILITY THAT SUCH BK/L COULD BE MISINTERPRETED AS NEW RESTRICTION ON ROLE OF FEDERAL COURTS AND THUS NEW BURDEN ON LEGAL UNITY BETWEEN BERLIN AND FRG. IN FACT, IT SEEMS TO US THAT WHATEVER USEFULNESS A BK/L MIGHT HAVE WOULD BE IN RELATION TO SOME UNKNOWN CASE IN FUTURE WHEN CONSTITUTIONAL COURT MIGHT SEEK TO REVIEW DECISION OF BUNDESGERICHTSHOF IN BERLIN MATTER, RATHER THAN POSSIBILITY BUNDESGERICHTSHOF WOULD CAUSE PROBLEMS BY CITING CONSTITUTIONAL COURT IN CONNECTION WITH BRUECKMANN OR SIMILAR GDR EXTRADITION CASE. IT SHOULD BE NOTED, MORE-OVER, THAT WHILE UK REP'S POINT (PARA 5 REF C) THAT NO ONE ON WESTERN SIDE CAN CONTROL GDR'S ABILITY TO MAKE FUTURE REQUESTS FOR EXTRADITION IS ACCURATE, IT IS FULLY UP TO BERLIN AUTHORITIES WHETHER THEY WISH TO ENTERTAIN SUCH REQUESTS. ON BALANCE, THEREFORE, WE WOULD PREFER TO LEAVE BK/L OUT OF SCENARIO UNLESS IT IS SINE QUA NON FOR SMOOTHING WAY TO EARLY BONN GROUP AGREEMENT THAT FRG CAN PROCEED WITH ITS TIMETABLE FOR LEGISLATING MEANS FOR BERLIN OFFICIALS TO RESOLVE BRUECKMANN AFFAIR THIS FALL. KLEIN

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